

IN THE MATTER OF PETER KIEWIT )  
SONS' CO., )

VS.

Respondent. )

## FINDINGS OF FACT, CONCLUSIONS AND ORDER

On March 30, 1971, near the trailer headquarters of appellant at Woodland, Clark County, Washington, appellant caused an open fire of used oil filters, oily rags, timber scraps and paper to

burn in violation of Section 4.01 of Regulation 1 of the Southwest Air Pollution Control Authority.

II.

Appellant was served on that date with Violation Notice No. CS 0567, and immediately extinguished the fire. Appellant believed the fire was within the purview of permissible household trash fires and was not wilfully in violation of Section 4.01 of Regulation 1 of the Southwest Air Pollution Control Authority.

III.

Violation Notice No. CS 0567 contains a printed instruction to "advise the Vancouver office (of the Southwest Air Pollution Control Authority) in writing within 10 days of the corrective action you have taken, or will take, to prevent continued or recurrent violations." Pursuant to this notice, appellant on March 31, 1971, wrote the Southwest Air Pollution Control Authority, detailing its misunderstanding of the regulation and giving assurance that "in the future (it would) refrain from this type of burning."

IV.

On March 31, 1971, prior to receiving appellant's letter, respondent levied a civil penalty of \$100 against appellant for the offense cited in Notice of Violation No. CS 0567.

Having considered these Facts, the Pollution Control Hearings Board comes to these

## CONCLUSIONS

### I.

Appellant was in violation of Section 4.01 of Regulation 1 of the Southwest Air Pollution Control Authority. The violation was technical; it was not wilful.

### II.

Respondent's printed advice on its Notice of Violation No. CS 0567, calling for a response "within 10 days" is not consistent with respondent's action, one day after the violation, of invoking a civil penalty for that violation; it is, at best, confusing as to whether the Authority desires compliance or penalty.

### III.


A nominal civil penalty would appear to be more in line with the mitigating circumstances in this matter.

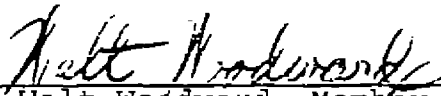
Therefore, the Pollution Control Hearings Board sustains the Southwest Air Pollution Control Authority in its issuance of Notice of Violation No. CS 0567 against appellant, but directs the Southwest Air Pollution Control Authority to reduce the civil penalty in connection therewith to an amount more commensurate with the circumstances.

DONE at Olympia, Washington this first day of June, 1971.

POLLUTION CONTROL HEARINGS BOARD

  
Matthew W. Hill, Chairman

  
James T. Sheehy, Member

  
Walt Woodward, Member